

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

BRANDON LEE BEVERLY,

Plaintiff,

v.

CIVIL ACTION NO. 2:05cv77
(Judge Maxwell)

DEBBIE COTTRELL, et al.,

Defendants.

REPORT AND RECOMMENDATION
42 U.S.C. § 1983

I. BACKGROUND

On October 6, 2006, the plaintiff, Brandon Beverly, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983. The plaintiff seeks \$1,000,000.00 in damages from the defendants. On February 16, 2006, the undersigned entered an Order granting the plaintiff's Application to Proceed Without Prepayment of Fees. On September 25, 2006, the plaintiff filed a letter asking that the court cancel this case. The undersigned has construed this to be a Motion to Dismiss.

II. ANALYSIS

Rule 41 of the Federal Rules of Civil Procedure provides for dismissal of actions. More particularly, Rule 41(a) provides for voluntary dismissal. Pursuant to Rules 41(a)(1), an action can be dismissed by the plaintiff without order of court upon filing of a notice of dismissal at any time before service by an adverse party of an answer or of a motion for summary judgment, whichever first occurs. Because this matter has not been screened, the defendants have not been served, and there is no an answer or motion for summary judgment. Accordingly, this matter may be dismissed without order of the court.

III. RECOMMENDATION

In consideration of the foregoing, it is the undersigned's recommendation that the Clerk be directed to close this case and dismiss it from the active docket of the Court.

Any party may file within ten (10) days after being served with a copy of this Recommendation with the Clerk of the Court written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable Robert E. Maxwell, United States District Court. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation.¹

The Clerk of Court is directed to mail a copy of this Recommendation to the *pro se* plaintiff and to all counsel of record.

DATED: September 29, 2006

/s *John S. Kaul*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE

¹ 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).